



The Public Service Commission State of South Carolina

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Notice and Request for Comments Regarding Proposed New Pipeline Regulation

On October 14, 2020, the Public Service Commission opened Docket No. 2020-247-A to review the South Carolina Code of Regulations Chapter 103 Pursuant to S.C. Code Ann. § 1-23-120(J), requiring an agency to conduct a formal review of its regulations every five years.

On April 16, 2021, Commission Staff conducted a workshop to review S.C. Code Ann. Regulations 103-300 *et seq.* and 103-400 *et seq.*, regarding Electric and Gas Systems. Comments were filed prior to the workshop regarding amendments and additions to the current Regulations. The Southern Environmental Law Center (SELC) participated in the workshop, and filed a proposed new regulation entitled "New Pipelines". The SELC proposal is attached to this Notice.

There was substantial discussion surrounding the proposed regulation during the April 16th workshop, and Commission Staff is interested in further comments from the workshop participants. Please file comments regarding the SELC's proposed regulation by **Friday, June 11, 2021**. Reply comments are due by **Friday, June 25, 2021**.

Enclosures

Subarticle 9

New Pipelines

103-495. Construction and/or Extensions of Pipelines.

A. If a gas utility intends to construct and/or extend a pipeline into an area where it does not currently have a pipeline or if a gas utility intends to construct and/or extend another pipeline in an area where it currently has a pipeline, the utility shall:

1. Prepare a map of the preferred route and any alternative routes for the proposed pipeline;
2. Prepare a list of the names and addresses of each of the property owners through whose property the preferred route and any alternative routes would be constructed;
3. Prepare an estimate of the cost of the construction of the proposed pipeline through the route or routes, with as much detail as possible at the time;
4. Determine and describe whether the area where the proposed pipeline would be built is served or can be served by electricity and whether electricity is providing or can provide the service that would be provided by the proposed pipeline;
5. Conduct and prepare a study of the direct and indirect environmental impacts of the proposed pipeline, including, but not limited to, the direct impacts of the construction of the pipeline; indirect impacts that would result from the pipeline, including, but not limited to, such factors as induced sprawl and development, air pollution, greenhouse gas emissions, and methane leaks; impacts on properties owned by private and public natural resource or conservation entities and on properties protected by conservation easements; and impacts on wildlife and wildlife habitat, including, but not limited to, federally-listed endangered and threatened species and highest priority and high priority species identified in the latest Wildlife Action Plan, or otherwise, of the South Carolina Department of Natural Resources;
6. Conduct and prepare an environmental justice study of the proposed pipeline, including, but not limited to, the direct and indirect impacts on individuals and communities of color and ethnic minorities, low income residents, heirs properties, farmlands, Century Farms, cemeteries, schools, places of worship and religious facilities, historic sites, day care facilities, and elderly residents and property owners;
7. Prepare an estimate of the amount the utility would propose to recover from ratepayers as a result of the construction and operation of the pipeline.

These materials shall be filed by the gas utility with the Commission and be available to the public at least sixty (60) days before the hearing set out in Subsection E.

B. Prior to the Commission's determination set out in Subsection F, the gas utility shall not communicate with any property owner concerning property acquisition or easements for the pipeline, other than sending the materials set out in Subsection C.

C. The gas utility shall no later than sixty (60) days before the hearing described in Subsection E send each property owner identified in Subsection A. 2. and adjacent property owners the following materials by certified U.S. mail, return receipt requested:

1. A notice of the hearing set out in Subsection E, providing the date, time, and location of the hearing; informing the recipients of their right to attend, to make oral and submit written comments before, at, and after the hearing; and providing a postal and email address of the Commission for the submission of written comments;
2. The Summary of the Rights of Property Owners Under the Eminent Domain Laws of South Carolina, set out in Subsection I;
3. Each of the items listed in Section A.

No other materials shall be included in this transmission to property owners and adjacent property owners.

D. At least thirty (30) days prior to the hearing set out in Subsection E, the gas utility shall publish a notice of the hearing set out in Subsection E in a newspaper of general circulation in the area where the proposed pipeline is proposed to be built, describing the proposed pipeline that is the subject of the hearing, providing the information set out in Subsection C.1., and providing a link to the Commission's website where the materials filed with the Commission may be accessed.

E. After the gas utility files with the Commission the materials set out in Subsection A, the Commission shall hold a hearing in or near the area where the proposed pipeline would be built. The hearing shall be held no sooner than sixty (60) days and no more than ninety (90) days after the utility sends the notice set out in Subsection C.1. Every person attending the hearing shall be provided the materials set out in Section A and the Summary of the Rights of Property Owners Under the Eminent Domain Laws of South Carolina set out in Subsection I. The gas utility shall have the opportunity to make a presentation concerning the proposed pipeline. Persons attending and the Office of Regulatory Staff may submit written or oral comments to the Commission at, before, or after the hearing and may ask questions of the utility representative or representatives attending the hearing. Written and oral comments and presentations made at the hearing shall be made part of the record concerning the proposed pipeline. Any person, organization, or entity may submit written comments to the Commission before or after the hearing during the comment period, and those comments shall also be made part of the record.

The comment period shall begin when the gas utility files with the Commission the materials set out in Subsection A and shall end on a date set by the Commission no sooner than thirty (30) days after the hearing.

F. Following the end of the comment period, the Commission shall consider all comments and materials submitted by the gas utility, the Office of Regulatory Staff, and all others at the hearing and otherwise and shall make the following decisions:

1. Whether electricity is providing or can provide the same services as the proposed pipeline;
and

2. Whether, after considering the following factors, the construction of the pipeline is in the public interest:
 - (a) The map of the route for the proposed pipeline;
 - (b) The properties through which the proposed pipeline would be constructed and adjacent properties;
 - (c) The estimated cost of the construction of the proposed pipeline;
 - (d) The direct and indirect environmental impacts of the proposed pipeline, including, but not limited to, the direct impacts of the construction of the pipeline; indirect impacts that would result from the pipeline, including, but not limited to, such factors as induced sprawl and development, air pollution, greenhouse gas emissions, and methane leaks; impacts on properties owned by private and public natural resource or conservation entities and on properties protected by conservation easements; and impacts on wildlife and wildlife habitat, including, but not limited to, federally-listed endangered and threatened species and highest priority and high priority species identified in the latest Wildlife Action Plan, or otherwise, of the South Carolina Department of Natural Resources;
 - (e) The environmental justice impacts of the proposed pipeline, including, but not limited to, the direct and indirect impacts on individuals and communities of color and ethnic minorities, low income residents, heirs properties, farmlands, Century Farms, cemeteries, schools, places of worship and religious facilities, historic sites, day care facilities, and elderly residents and property owners;
 - (f) The estimated amounts the utility would propose to recover from ratepayers as a result of the construction and operation of the pipeline.

If the Commission determines both (1) that electricity is not providing and cannot provide the same services as the proposed pipeline and (2) that the construction of the pipeline is in the public interest, then the gas utility may contact property owners through whose property the pipeline would be built concerning property acquisition or easements for the pipeline. All offers by the gas utility to purchase a landowner's property or an easement for the pipeline shall be set out in writing.

G. Whenever the gas utility contacts a property owner in person, electronically, or through written materials with respect to the pipeline, the gas utility shall provide the property owner the Summary of the Rights of Property Owners Under the Eminent Domain Laws of South Carolina set out in Subsection I.

H. The determination of the Commission is without prejudice to and does not reduce or alter in any way the rights of property owners and does not in any way alter or amend any of the laws of South Carolina dealing with eminent domain.

I. The following Summary shall be posted on the Commission's website for any proposed pipeline covered by this Subarticle and distributed as set out in this Subarticle:

SUMMARY OF THE RIGHTS OF PROPERTY OWNERS UNDER THE EMINENT DOMAIN LAWS OF SOUTH CAROLINA

[This Summary is not a complete explanation of all aspects of South Carolina eminent domain law. Property owners may consult counsel of their choice for advice concerning their rights]

All property owners have the right to retain legal counsel to advise them concerning their property rights and any other matter. All property owners have the right to retain legal counsel before talking with a gas utility, its land agent, or any of its representatives concerning the owner's property.

All property owners have the right to decide whether or not to talk with a gas utility, its land agent, or any of its representatives concerning the owner's property. All property owners have the right to communicate with a gas utility, its land agent, or any of its representatives only through the property owner's legal counsel.

All property owners have the right to decide whether to refuse or agree to a gas utility's request to enter the owner's property to conduct a survey. If the property owner refuses, the gas utility is required to obtain a court order to allow it to conduct a survey on the owner's property.

All property owners have a right to reject or accept any offer by the gas utility to purchase any of the owner's property or an easement across the owner's property.

All property owners have the right to negotiate with a gas utility concerning any offer to purchase any of the owner's property or an easement across the owner's property.

The decisions by other property owners along the route of a proposed pipeline do not affect or determine the rights of other property owners. Each property owner has the right to make an independent decision about whether or not to reach an agreement with the gas utility.

All property owners have the right to negotiate specific terms of the easement, such as when and how the gas utility may access the property, security issues with regard to fencing and gates, the specific commodities that will be allowed to flow through the pipeline on the owner's property, responsibility for damage to the owner's property, compensation for agricultural or business losses caused by the pipeline and easement, the number of pipelines allowed within the easement now and in the future, and the gas utility's responsibility if the pipeline is abandoned at any point after land disturbance has started.

If the property owner decides not to sell the gas utility property or an easement across the owner's property, the gas utility can acquire the property or an easement only by filing an eminent domain lawsuit against the property owner and obtaining in that action a court order that grants the gas utility the right to exercise eminent domain and that awards the property owner just compensation for the owner's property or easement across the owner's property.

All property owners have the right to refuse offers by the gas utility and to defend against any eminent domain action that the gas utility may file in court. All property owners have the right to retain legal counsel to defend and oppose any eminent domain action.

Within thirty (30) days after service of the gas utility's Condemnation Notice, the landowner may file an action in South Carolina circuit court challenging the gas utility's right to condemn.

If anyone believes that a gas utility, its land agent, representative, or other agent has acted improperly, that person can learn about the complaint procedure of the South Carolina Public Service Commission by going to this site: <https://psc.sc.gov/consumer-info/file-complaint#:~:text=INFORMAL%20COMPLAINT%2FINQUIRY&text=This%20division%20can%20be%20reached,00%20p.m.%2C%20Monday%20through%20Friday.&text=You%20may%20also%20visit%20their,.ors.sc.gov>.